

HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

JUSTIN ERIN CRITCHELL,

Defendant.

No. CR20-00086-RAJ

ORDER TO SHOW CAUSE

This matter comes before the Court *sua sponte*. As the COVID-19 outbreak has spread throughout the world over the last year, claiming over 267,000 lives in the United States alone, criminal trials and proceedings across the country have been upended. As courts monitor the trajectory of COVID-19 cases locally, they must constantly reassess their ability to balance the rights of criminal defendants with the rights of participants in criminal jury trials, as well as the health risks imposed on all.

Over the last two months, King County has experienced a swift uptick in the number of coronavirus cases with a 7-day average of about 140 daily cases in early October to a peak average of about 720 daily cases just before Thanksgiving.<sup>1</sup> On November 15, 2020, after the average number of Washington COVID-19 cases doubled, Washington Governor Jay Inslee implemented a four-week statewide set of restrictions.<sup>2</sup>

<sup>1</sup> <https://www.kingcounty.gov/depts/health/covid-19/data/daily-summary.aspx>

<sup>2</sup> <https://www.governor.wa.gov/news-media/inslee-announces-statewide-restrictions-four-weeks>.

1 Governor Inslee indicated that “[t]his spike puts us in a more dangerous a position as we  
2 were in March.”<sup>3</sup> And health officials warn the rate of infection will only continue to  
3 increase over the next few weeks.

4 Indeed, any hope for even a brief respite from the surge of coronavirus cases and  
5 related hospitalizations is likely to be dashed by the flurry of activity over the  
6 Thanksgiving holiday. Despite warnings against travel from the Centers for Disease  
7 Control and Prevention (“CDC”), nearly 1.2 million people went through airports on the  
8 Sunday after Thanksgiving—the highest number since the start of the pandemic in March  
9 2020.<sup>4</sup> Given these activities, Dr. Anthony Fauci, Director of the National Institute of  
10 Allergy and Infectious Diseases, described the expected trajectory of coronavirus  
11 infections over the first two weeks in December as “a surge superimposed on the surge  
12 we are already in.”<sup>5</sup> While Thanksgiving travel in Washington did not increase as much  
13 as it did nationally, a surge in cases and hospitalizations is expected nonetheless.<sup>6</sup>

14 In response to the surge of COVID-19 cases, federal district courts across the  
15 country have suspended jury trials or grand jury proceedings, reflecting a halt in the  
16 efforts by federal courts to resume operations.<sup>7</sup> In Seattle, King County Superior Court  
17 suspended all in-person jury trials as of November 20, 2020 in response to the rise of  
18 infections.<sup>8</sup> It determined that given the surge in cases, “[s]uspending jury trials is

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20 <sup>3</sup> *Id.*

21 <sup>4</sup> <https://www.king5.com/article/news/health/coronavirus/washington-state-after-thanksgiving-holiday-coronavirus-covid-19-increase/281-9c0fa5ad-ea2b-404d-ba19-83b4a677115b>.

22 <sup>5</sup> <https://www.nbcnews.com/politics/meet-the-press/fauci-warns-superimposed-coronavirus-surge-after-thanksgiving-travel-n1249270>.

23 <sup>6</sup> <https://www.king5.com/article/news/health/coronavirus/washington-state-after-thanksgiving-holiday-coronavirus-covid-19-increase/281-9c0fa5ad-ea2b-404d-ba19-83b4a677115b>.

24 <sup>7</sup> Courts Suspending Jury Trials as COVID-19 Cases Surge, United States Courts (Nov.  
25 20, 2020), <https://www.uscourts.gov/news/2020/11/20/courts-suspending-jury-trials-covid-19-cases-surge>.

26 <sup>8</sup> <https://www.kingcounty.gov/courts/superior-court/newsroom/news.aspx>.

1 necessary to protect” the health and safety of jurors, litigants, court staff, as well as the  
2 entire community.<sup>9</sup> The health risks of holding jury trials are not hypothetical. They  
3 were vividly displayed two weeks ago when an Eastern District of Texas judge was  
4 forced to grant a mistrial in a jury trial because fifteen participants had tested positive for  
5 the coronavirus despite a variety of safety measures implemented by the court.<sup>10</sup>

6 At this critical juncture in which the number of cases and hospitalizations has  
7 skyrocketed both locally and nationally, creating a significant health risk for gatherings,  
8 the Court orders Defendant and the Government to show cause why a criminal jury trial  
9 should proceed as scheduled.

10 To address this matter, a hearing will be held on Friday, December 4, 2020 at  
11 9:45 AM via Zoom videoconference.

12 DATED this 2nd day of December, 2020.

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14 The Honorable Richard A. Jones  
15 United States District Judge  
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27 <sup>9</sup> *Id.*

28 <sup>10</sup> <https://www.law360.com/articles/1329617/covid-19-outbreak-leads-to-mistrial-in-edtx>.